

REMARKS/ARGUMENTS

The rejections presented in the Office Action dated March 29, 2007 (hereinafter Office Action) have been considered but are believed to be improper. Reconsideration of the pending claims and allowance of the application in view of the present response is respectfully requested.

Applicant respectfully traverses the §103(a) rejection based on the teachings of U.S. Patent No. 6,188,886 to Macaulay *et al.* (hereinafter “Macaulay”) in view of U.S. Publication No. 2005/0123108 by Smith (hereinafter “Smith”) because the asserted references alone, or in combination, do not teach each of the claimed limitations. For example, Macaulay does not teach requesting suspension of data streaming on the basis of a first mode change command, as claimed. In direct contrast, Macaulay teaches that receipt of an acceptance or rejection signal (asserted as corresponding to the claimed first mode change command) results in reconnection of a handset to a data communication mode (column 3, lines 9-11; column 8, lines 9-14). Moreover, the interruption of a data session in Macaulay occurs prior to any input from a user. Specifically, Macaulay teaches that existing navkey icons are cleared when an incoming call is received (column 7, lines 17-19; step 504 of Fig. 5) in order to display the name or number of the calling party and that when the navkey icons are restored (after the call is accepted or rejected) a user is allowed to resume the data session (column 8, lines 3-7). Rather than teaching requesting for suspension of data streaming on the basis of a first mode change command Macaulay teaches that any interruption or suspension occurs prior to receipt of user input and that a data session is reconnected in response to a user’s acceptance or rejection signal.

Moreover, Smith has not been shown to overcome the above-discussed deficiencies in the teachings of Macaulay. In contrast to the Examiner’s assertion, Smith does not teach performing data streaming communication, as claimed. The cited portions at paragraphs [0017] and [0018] merely teach a data connection for access to the Internet. Paragraph [0036] further identifies the type of data session as being ITU-T standard V.92 which relates to a modem standard supporting 56 kilobytes/second data transfer speed. As data streaming refers to the transfer of data at a steady high-speed rate in real-time (an example definition may be found on the Internet at

http://searchnetworking.techtarget.com/sDefinition/0,,sid7_gci840087,00.html), a skilled artisan would recognize that Smith's data session would not correspond to the claimed data streaming communication. As Smith does not teach performing data streaming communication, as claimed, Smith also does not teach requesting for suspension of such data streaming communication. As neither Macaulay nor Smith teaches at least the limitations directed to data streaming communication, any asserted combination of these teachings must also fail to teach such limitations. Without a presentation of correspondence to each of the claimed limitations, the §103(a) rejection is improper. Applicant accordingly requests that the rejection be withdrawn.

Dependent Claims 2-8, 10-16 and 18-24 depend from independent Claims 1, 9 and 17, respectively. Each of these dependent claims also stands rejected under 35 U.S.C. §103(a) as being unpatentable over the above-discussed combination of Macaulay and Smith. While Applicant does not acquiesce to any particular rejections to these dependent claims, including any assertions concerning descriptive material, obvious design choice and/or what may be otherwise well-known in the art, these rejections are moot in view of the remarks made in connection with the independent claims above. These dependent claims include all of the limitations of their respective base claims and any intervening claims and recite additional features which further distinguish these claims from the cited references. "If an independent claim is nonobvious under 35 U.S.C. §103, then any claim depending therefrom is nonobvious." MPEP §2143.03; *citing In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988). Therefore, dependent Claims 2-8, 10-16 and 18-24 should also be allowable over the combination of Macaulay and Smith.

With respect to the §101 rejection of Claims 17-24, independent Claim 17 has been amended to characterize that the computer program is stored on a computer-readable medium such that it is structurally and functionally interrelated to the medium. Moreover, contrary to the assertion that the claims do not produce a useful, concrete and tangible result, at least independent Claim 17 is directed to indicating reception of a communication connection request to a user. Consistent with MPEP §2106.01, Applicant submits that Claim 17, and Claims 18-24 which depend therefrom, are directed to statutory subject matter. Applicant accordingly requests that the rejection be withdrawn.

The additional changes to the claims are made merely for readability reasons and not for reasons necessitated by the prior art or record.

Applicant has also added new Claim 25. Support for Claim 25 may be found in the Specification, for example, in Fig. 2 and the corresponding discussion in paragraphs [0030] through [0076]; therefore, the addition of Claim 25 does not introduce new matter. Claim 25 is believed to be patentable over the asserted references for the reasons discussed above in connection with the other independent claims.

It should also be noted that Applicant does not acquiesce to the Examiner's statements or conclusions concerning what would have been obvious to one of ordinary skill in the art, obvious design choices, common knowledge at the time of Applicant's invention, officially noticed facts, and the like. Applicant reserves the right to address in detail the Examiner's characterizations, conclusions, and rejections in future prosecution.

Authorization is given to charge Deposit Account No. 50-3581 (KOLS.101PA) any necessary fees for this filing. If the Examiner believes it necessary or helpful, the undersigned attorney of record invites the Examiner to contact the undersigned attorney to discuss any issues related to this case.

Respectfully submitted,

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